

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Updating the Intercarrier Compensation)	WC Docket No. 18-156
Regime to Eliminate Access Arbitrage)	

REPLY COMMENTS OF WEST TELECOM SERVICES, LLC

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EXECUTIVE SUMMARY

West Telecom Services, LLC (“West”) files these Reply Comments responding to other parties’ comments in the above-captioned matter. The record shows that many parties agree with West that there is limited evidence in the record of 8YY originating access charge abuses. There is also substantial agreement that the approach of migrating the compensation system to bill-and-keep is inappropriate for a one-way traffic stream. Giving large interexchange carriers (“IXCs”) a free ride on the networks of other carriers is likely to harm consumers and competition, particularly because intermediate providers, which play a vital role in call completion for many providers, have no end-user customers from which to offset revenue losses, and LECs have little ability to raise customer rates to offset lost access revenues. Moreover, there is little evidence even that 8YY subscribers will receive any share of any purported IXC savings. Bill-and-keep could also encourage other bad practices, such as Telephony Denial of Service (“TDoS”) attacks that interfere with call completion and can cause substantial harm when they affect public health and safety agencies.

Other parties share West’s view that the appropriate response to any actual abuses is to address the abuses directly, rather than to radically revamp the toll-free originating access intercarrier compensation system. The Commission should declare unlawful specific practices employed by a few bad actors, such as fraudulent use of automated calling devices, and it should enlist industry cooperative efforts to help identify and address these situations. It should also require good faith negotiation of direct connection arrangements for all traffic exchanged by carriers (including all traffic of all their affiliates) where traffic volumes warrant, generally where required capacity is equivalent to four T-1s.

If the Commission nonetheless proceeds to adopt some of its proposals, it should ensure that any rate caps on transport charges and database query charges are reasonable and set in a

non-arbitrary manner. Any limits on the number of queries per call should contain an exception where, as in the case of legacy networks not employing SS7, the downstream provider does not receive information necessary for call completion.

**BEFORE THE
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In the Matter of)	
)	
8YY Access Charge Reform)	WC Docket No. 18-156
)	

REPLY COMMENTS OF WEST TELECOM SERVICES, LLC

West Telecom Services, LLC (“West”)¹ submits these reply comments addressing comments of third parties filed in response to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) in the above-captioned matter.² West filed initial comments in this matter on September 4, 2018.³

¹ West is a wholly-owned subsidiary of West Corporation, a leading technology enablement company connecting people and businesses around the world.

² *In the Matter of 8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, WC Docket No. 18-156, FCC 18-76 (rel. Jun. 8, 2018) (“*FNPRM*”). *See also Public Notice*, Wireline Competition Bureau Announces Comment and Reply Comment Dates for Further Notice of Proposed Rulemaking on Toll Free (8YY) Calling Access Charge Reform, DA 18-694 (released Jul. 3, 2018).

³ Comments filed in this proceeding on September 4, 2008 are referenced in these Reply Comments as the *Comments* of the respective parties that filed them.

I. THE MINIMAL RECORD DATA CONCERNING 8YY ACCESS ARBITRAGE DOES NOT OFFER SUFFICIENT JUSTIFICATION FOR MOVING THE ONE-WAY TRAFFIC STREAM OF 8YY SERVICE TO BILL-AND-KEEP.

A. There Is Little Evidence of Significant 8YY Access Charge Arbitrage.

In its *Comments*, West disagreed with the view expressed in the *FNPRM* that there is a significant problem of regulatory arbitrage in connection with originating access charges for toll free “8YY” services.⁴ Nor does the record indicate that there is substantial arbitrage warranting a major change in the Commission’s intercarrier compensation regime with respect to 8YY originating access charges. The Ad Hoc Telecommunications Users Committee (“Ad Hoc”), for example, asserts there are “powerful incentives for unscrupulous actors to take advantage of this broken market by generating traffic to 8YY numbers for no purpose other than to inflate the access charge revenues that are ultimately paid by toll free service customers.”⁵ Yet Ad Hoc cites no evidence that this is a pervasive, persistent problem or that any but a few “bad actors” engage in it. Similarly, Verizon asserts that “[t]he disparity between terminating access (which has transitioned to bill-and-keep) and originating access has fueled uneconomic arbitrage schemes, leading to harassing calls to 8YY customers, devaluation of 8YY services, and many intercarrier compensation disputes.”⁶ Like Ad Hoc, however, Verizon offers no evidence that such practices are routine in the 8YY originating access traffic stream, although Verizon describes some types of schemes that may be employed.⁷

⁴ *West Comments* at 1–2.

⁵ *Comments of The Ad Hoc Telecommunications Users Committee* at 4.

⁶ *Comments of Verizon* at 2.

⁷ *See id.*

Many other parties agree with West that there has been little evidence of such a problem.⁸

For example, The Nebraska Rural Telephone Companies (“NRIC”) stated,

[T]he . . . *FNPRM* has not identified the volume of arbitrated 8YY traffic vis-a-vis non-arbitrated 8YY traffic, has not identified the number of carriers that may be engaged in such arbitrage, and has provided no sustainable rationale to explain why the FCC’s Enforcement Bureau cannot adequately address the carrier-specific issues in a prompt and comprehensive manner.⁹

Further, West recently reviewed formal complaint filings in the Commission’s ECFS system in an effort to determine whether the Commission had received many formal complaints concerning such problems. A search for complaints referencing “8YY,” “mileage pumping,” “traffic pumping,” “database query charges,” or “DIP charges” turned up only two such complaints that even mentioned 8YY access charges. One was filed by CenturyLink in March 2018.¹⁰ While the initial informal complaint apparently included allegations of excessive

⁸ See, e.g., *Comments of Windstream Services, LLC, Frontier Communications Corporation, and NTCA–The Rural Broadband Association* (“Windstream Comments”) at 3 (“The Commission proposes to take the dramatic step of moving to bill-and-keep to address arbitrage concerns based on little evidence, beyond the self-serving statements of the major toll free service providers, regarding the scope or extent of such arbitrage or its effect on 8YY prices. And, what evidence there is suggests that 8YY arbitrage is not an industry-wide problem, but rather that such activity is confined to a small handful of carriers.”); *Comments of WTA – The Voice for Rural Broadband* (“WTA Comments”) at 4 (“WTA has no reason to challenge the accuracy of such allegations, but is aware of no specific instances of 8YY fraud and arbitrage and has seen little evidence detailing the prevalence of such behavior.”). As NRIC pointed out, “incidents of proven arbitrage and a need for elimination of the 8YY originating access regime are two distinct matters.” *Comments of The Nebraska Rural Independent Companies* (“NRIC Comments”) at 2. CenturyLink cautioned that Commission rules “should be carefully crafted so as to eliminate the opportunity for arbitrage – while also striving to treat all providers equally and giving no carrier cause to complain that it has been unfairly caught up in a rule targeted at schemes when they themselves are innocent.” *Comments of CenturyLink* (“CenturyLink Comments”) at 5.

⁹ *NRIC Comments* at 3.

¹⁰ *CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc.*, Docket No. 18-73, File No. EB-18-MD-002 – Formal Complaint (“*CTL Complaint*”). CTL asserts that Birch violated the CLEC Benchmark Rule of 47 C.F.R. § 61.26 and that this constituted a “an unjust and unreasonable practice” under 47 U.S.C. § 201(b),

database query charges related to 8YY calls, that aspect had been dropped when the formal complaint was filed.¹¹ Thus, one of the two formal complaints mentioning 8YY originating access abuses that turned up in West’s ECFS search is not even about 8YY originating access abuse.¹²

The other formal complaint West located was filed by AT&T against Great Lakes Communication Corp. in 2016.¹³ The attached federal district court complaint, from the collection action instituted by GLCC against AT&T,¹⁴ charges AT&T with non-payment of access charges in a situation where AT&T had alleged that it was the victim of traffic pumping, including by an advertising service that dialed 8YY numbers and played automated messages. The text of AT&T’s FCC complaint does not appear to mention 8YY access charges at all. Again, this complaint hardly provides evidence of pervasive abuse in connection with 8YY origination access charges.

While West does not claim that it necessarily found references to all complaints possibly raising arbitrage concerns in connection with toll-free originating access services, the paucity of

making the Birch tariff “void *ab initio*.” *Id.* at 2. The Complaint has been dismissed. *Order of Dismissal*, Docket No. 18-73, Bureau ID No. EB-18-MD-002.

¹¹ *Id.* at 5.

¹² See Exhibit B to the *CTL Complaint* (Birch’s September 28, 2017, response to the predecessor CTL informal complaint) (quoting the Commission’s 2004 Access Charge Order, in which the Commission stated that it was rejecting AT&T’s request to cap 8YY data base query charges at incumbent LEC charge levels “[b]ecause we find that IXC allegations of wide-spread fraud or abuse may indeed be overstated.”). See *Access Charge Reform*, 19 FCC Rcd 9108, n.251 (2004).

¹³ *AT&T Corp. v. Great Lakes Communication Corp.*, File No. EB-16-MD-001 (filed Aug. 16, 2016). Its focus was on alleged access stimulation arrangements with free conferencing and chat companies. Interestingly, one of the complaints was that Great Lakes refused to enter into direct connections with AT&T, at rates in the CenturyLink tariff, which would have eliminated database queries. *Id.* at ¶ 4. AT&T asserted that “GLCC’s refusal to provide a direct connection arrangement with AT&T is an unjust and unreasonable practice in violation of Section 201(b)” of the Communications Act of 1934, as amended (the “Act”). *Id.* at ¶ 71.

¹⁴ See Exhibit 81 to the formal complaint (the complaint in *GLCC v. AT&T*, No.4:08-cv-00005-JEG-RAW) (N.D. Iowa, filed Mar. 19, 2015) at 48.

such filings, as well as the comments of other parties in this docket, strongly suggests that there is a very limited, if any, problem in this area. The two formal complaints described above hardly provide overwhelming evidence of widespread 8YY originating access charge abuse. Nothing in the record warrants an about-face from the Commission's justified conclusion in the 2004 Access Charge Order that claims of 8YY originating access charge abuse may well be significantly overstated. Given the very limited number of formal complaints raising 8YY arbitrage concerns, and the lack of credible evidence presented, the Commission should find no basis for precipitously effecting major changes in the 8YY originating access compensation system.¹⁵

B. There Is Substantial Evidence of Likely Harm to Consumers, Local Exchange Carriers, and Intermediate Providers by Transitioning 8YY Originating Access Charges to Bill-and-Keep and Giving IXC's Free Access to Other Carriers' Networks.

In its *Comments*, West pointed out that there is likely to be harm to consumers¹⁶ and local exchange carriers ("LECs") as a result of giving interexchange carriers ("IXCs") a free ride on

¹⁵ See *NRIC Comments* at 6 ("NRIC is concerned as to the lack of data-driven analysis contained within the 8YY *FNPRM* and thus an uncertain factual basis for such statement, particularly when the reforms that have been proposed require a complete upheaval of the intercarrier compensation framework for 8YY traffic").

¹⁶ *Comments of ITTA – The Voice of America's Broadband Providers* ("ITTA Comments") at 2 ("shifting the costs of 8YY calls from businesses to ratepayers, not only would be antithetical to the notion of toll free service and harmful to the public interest, it would also be cognitively dissonant insofar as the *FNPRM* itself portrays 8YY numbers as more useful to businesses than consumers."); *WTA Comments* at 7 ("WTA estimates that RLECs currently receive at least \$40 million to \$45 million per year in originating interstate and intrastate end office and tandem switching and transport revenues related to 8YY calls. That is approximately 20 percent of total remaining RLEC switched access revenues."); *Comments of Charter Communications, Inc.* ("Charter Comments") at 1–2 (noting that the proposal to transition all 8YY to a bill-and-keep regime is unnecessary and unfair to end users and originating carriers, and will result in immediate and direct harm). WTA also described possible rate effects on its members and their customers.

the networks of other carriers for a one-way traffic stream.¹⁷ Such a transition would give the vertically-aligned IXC's the green light to stimulate ever more such usage because for them it is virtually cost-free, while LECs and intermediate providers¹⁸ are left without an opportunity even to recover the costs imposed on them by the IXC's use of other carriers' networks.¹⁹ And, "RLECs would be placed in the perilous and untenable public relations position of charging their customers indirectly for 8YY service that has long been advertised and provided as a free service to those customers" even if their state commissions allow them to increase rates to recover some or all of their lost 8YY originating access revenues," while "IXCs selling 8YY services get windfalls profits as their former 8YY originating access costs drop to zero."²⁰

Further, because toll free database queries are not performed by originating wireless and VoIP-centric providers to nearly the extent of LNP queries, and because those very wireless and

¹⁷ *ITTA Comments* at 7 (transition to bill-and-keep not warranted because "8YY traffic is not reciprocal. One carrier's originating traffic does not terminate on another carrier's network. The originating 8YY traffic belongs to the carrier that sold the 8YY number to the customer, but the carrier that sold the 8YY number does not own the network used to originate the 8YY calls."). See also *id.* ("LECs handling originating 8YY traffic would either have to pass the costs of such traffic on to their subscribers or absorb the loss of originating access revenue from 8YY calls. Neither outcome is in the public interest.") and *id.* at 17 ("if the Commission applies bill-and-keep to originating 8YY traffic, without replacement of this significant revenue stream, the financial distress, especially of rural LECs, will increase, thus making them less capable of servicing existing debt and further hindering their ability to make the investments required to deploy broadband.").

¹⁸ See *CenturyLink Comments* at 7 ("[O]nly some carriers have made the investment necessary to build-out intermediate network facilities. As a result, the underlying rationale for bill-and-keep (i.e. that a provider's end users should ultimately bear the network costs) does not carry-over cleanly to intermediate services. These intermediate network services will remain critical in IP networks of the future. In order to facilitate the necessary investment in such services and avoid competitive harm, the Commission must allow tandem providers (and providers of functionally equivalent intermediate IP network services) to exist and to compete equally.").

¹⁹ See *ITTA Comments* at 2 ("To the extent that some carriers continue to amass exaggerated origination minutes and costs for 8YY calls, these are in some cases, as the *FNPRM* concedes, attributable to parties engaged in arbitrage with respect to the 8YY intercarrier compensation regime. Therefore, any actions that the Commission takes to combat 8YY access charge abuses should be targeted towards such entities.").

²⁰ *WTA Comments* at 2.

VoIP-centric providers originate a preponderance of today's toll free calls, there is an increased dependence on intermediate providers to perform toll free queries. Because those very intermediate providers do not have the end user subscriber relationships, the costs incurred must be recovered by the toll free query charges. A combination of vertically-aligned IXC's that can recover their costs from end user subscribers, and intermediate providers that have no end user subscribers from which to recover their costs would produce an unsustainable market environment, likely resulting in a reduction in competition and consumer choice, as well as the end of free 8YY service to consumers.²¹ Reduced competition in the intermediate provider network space would mean fewer alternate network routes and connections and thereby raise potential National Security interest concerns. And originating carriers – other than the biggest vertically-aligned IXC's – are not currently equipped, and may never be equipped, to perform large numbers of toll free queries and establish the magnitude of connections that intermediate providers already utilize for those originating carriers' traffic. Our Nation needs the ability to withstand unforeseen disasters and other unpredictable network demands, and that ability is dramatically enhanced by a competitive environment that includes healthy and diverse networks of intermediate providers such as West.

²¹ *Comments of SOMOS, Inc. ("Somos Comments")* at n.5 ("Somos is concerned about the negative impact of a drastic change in the originating access regime may have on providers in the Toll-Free ecosystem. Providers negatively impacted may choose to leave the business, which, in the long run, could eliminate provider choice and end up costing Toll-Free subscribers more for Toll-Free services, not less."). CenturyLink, while supportive of much of the Commission's plan to reduce 8YY originating access charges, *CenturyLink Comments* at 3, also expressed caution about the implementation of the Commission's proposals, saying "some caution is called-for to ensure that the underlying economics of 8YY traffic and important related policy issues are adequately attended-to." *Id.* at 1. CenturyLink opposed adoption of bill-and-keep for tandem switching and transport. *Id.* at 2. As CenturyLink pointed out, "the fundamental purpose of 8YY service is to relieve calling parties of the cost of the call." *Id.* at 7.

Several parties have provided direct evidence of likely harm. For example, ITTA noted that “one-half to approximately 60 percent of [certain ITTA members’] originating interstate access minutes are attributable to 8YY calls, and a move of 8YY originating traffic to bill-and-keep would deplete them of revenues ranging from over \$900 thousand to approximately \$1.6 million annually.”²² ITTA also pointed out that transitioning 8YY originating access to bill-and-keep would unjustifiably shift much of the cost of 8YY service from businesses and their customers who actually use it to all wireline consumers, irrespective of whether they use the service, in contravention of the toll free nature of the service.²³

C. The IXCs Have Not Shown They Pass Access Charge Reductions to Subscribers or Consumers.

The record does not include any evidence that the IXCs have passed on any benefits of their past cost savings from reduced access charges even to their subscribers, much less to consumers.²⁴ Rather, a number of commenting parties have said that no such pass-through has occurred.

While Ad Hoc members may have hopes of future savings, perhaps in return for their support of the IXCs,²⁵ the record is still bare of evidence that would suggest that either subscribers or consumers will share in the IXCs’ windfall.

²² *ITTA Comments* at 8. NRIC reported that the “the percentage of originating traffic to an 8YY number currently ranges from 20 to 36 percent for the companies that comprise NRIC.” *NRIC Comments* at 4.

²³ *ITTA Comments* at 22. Accord, *Windstream Comments* at 4–5.

²⁴ *Cf. Somos Comments* at 3 (“Should the Commission lower 8YY originating access rates, including dip charges, the Toll-Free subscriber should be the beneficiary of that lower cost.”). Somos also noted that LECs passed on about 50% of their savings to end-users following the USF/ICC Transformation Order. *Id.*

²⁵ Alternatively, Ad Hoc may be supporting bill-and-keep because it would shift costs from subscribers to consumers. *See ITTA Comments* at 10 (“Thus, compounding the injury of effectively eviscerating the toll free service is that a bill-and-keep regime in the case of 8YY calls ‘would result in shifting costs from businesses to end-user customers. Ultimately,

D. There Is Risk that Bill-and-Keep Would Greater Enable Other Forms of Fraud Such as TDoS Attacks.

The Commission should not be misled into believing that bill-and-keep is a panacea for all opportunities for fraud and unlawful arbitrage. Not only is bill-and-keep inappropriate in the context of one-way traffic where only the IXC's have an opportunity for cost recovery,²⁶ much less earning a reasonable profit,²⁷ but bill-and-keep also may actually increase opportunities for fraudulent activity.

For example, a move to bill-and-keep may in fact increase the frequency of Telephony Denial of Service ("TDoS") attacks, such as those attacking emergency call centers. The absence of access charges would make it even cheaper to use automation to deprive the public of calling opportunities²⁸ and 8YY subscribers (which may include public health and safety agencies as well as commercial enterprises) of the service for which they are paying. At worst, it may have severe adverse consequences for public services and emergency relief. Some TDoS

consumers will suffer as rates increase to subsidize a business service.' Moreover, if charges for ostensibly toll-free calls are embedded in LECs' rates, consumers who do not even place 8YY calls will end up subsidizing them nonetheless, rather than the businesses and their customers that primarily benefit from the 8YY calls."). ITTA also noted the irony of the "possibility that, if the *FNPRM*'s proposal is adopted, callers will be responsible for a larger share of the total costs of an 8YY call than 8YY subscribers will be" and that "the 8YY subscribers' cost of doing business could primarily be transferred to all wireline ratepayers as a result of this proposal." *Id.* at 11.

²⁶ CenturyLink commented that current Commission rules preclude ILEC recovery of lost revenues from end users. *CenturyLink Comments* at 3.

²⁷ CenturyLink expressed concern that rates insufficient for cost recovery would violate Sections 201, 332 and 252(d)(2) of the Act in the absence of alternative cost recovery mechanisms. *CenturyLink Comments* at 22–23.

²⁸ "The underlying enabler for TDoS attacks is the ability to use automation to cheaply and easily generate hundreds or thousands of simultaneous calls." DHS Science and Technology Directorate, "Telephony Denial of Service,"

https://www.dhs.gov/sites/default/files/publications/508_FactSheet_DDoSDTDoS%20One%20Pager-Final_June%202016_0.pdf.

attacks start as pranks, but others are motivated by extortion.²⁹ Regardless of the motivation, bill-and-keep may in fact make these problems worse.

II. SEVERAL COMMENTING PARTIES SHARE WEST’S VIEWS THAT ANY 8YY ARBITRAGE CONCERNS CAN BE ADDRESSED BY NARROWLY-TAILORED RULES SIMILAR TO THOSE SUCCESSFULLY IMPLEMENTED IN OTHER ARBITRAGE SITUATIONS, AND THAT ANY RATE CAPS MUST BE REASONABLE AND NON-ARBITRARY.

Like West, a number of parties have urged the Commission to address any arbitration concerns that may arise by adopting narrowly targeted rules³⁰ that focus on bad actors and bad practices.³¹ They agree that complaint and enforcement procedures are among the available remedies for any robocalling-enabled arbitration or other bad practices.³² Those bad practices

²⁹ See “Partnering to Prevent TDos Attacks,” (Jul. 9, 2018), <https://www.dhs.gov/science-and-technology/blog/2018/07/09/partnering-prevent-tdos-attacks>.

³⁰ *WTA Comments* at 1 (“the Commission can readily eliminate arbitration and fraud in the current 8YY system without penalizing innocent rural local exchange carriers (“RLECs”) by eliminating critical originating access charges and revenues for 8YY calls. Fraudulent and otherwise illegitimate robocalls made for the sole or primary purpose of generating originating 8YY access revenues can be: (1) prohibited; (2) traced and identified; (3) precluded from collecting unlawful charges; and (4) subjected to maximum allowable forfeitures.”). Accord, *Windstream Comments* at 4 (Commission should “consider adopting targeted measures to address 8YY arbitration schemes, consistent with the terminating access stimulation rules.”).

³¹ See *ITTA Comments* at 3 (Commission should take “targeted measures to address abusive 8YY arbitration schemes,” akin to that for other problems). See Letter from Gerard J. Waldron, Counsel to Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 07-135, and CC Docket No. 01-92, at 1 (filed Dec. 21, 2017) (Inteliquent Dec. 21, 2017 *Ex Parte*) (supporting Commission efforts to address 8YY-related abuses “by a relatively small group of bad actors”); see also Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-155, 18-156, 17-206, and 10-90, at 1 (filed May 29, 2018) (urging the Commission to be “surgical in its focus upon inefficient arbitration, defining precisely what it considers to constitute such a practice and crafting remedies specifically to solve for any such concern”). AT&T has its own direct connection proposal, but, significantly, it would apply only when an IXC is “financially responsible for traffic originated by a LEC or a CMRS carrier,” and this proposal is not mandatory or bilateral, and does not apply to all the IXC’s traffic. *Comments of AT&T* at 2.

³² *WTA Comments* at 5 (“The Commission’s Enforcement Bureau and the industry’s Robocall Strike Force have substantial experience in identifying, tracing, investigating and prosecuting 8YY robocalling activities. With active enforcement, removal of profit, and looming large forfeitures, robocall 8YY traffic pumping practices can be halted by direct actions that penalize

can be declared unlawful, and industry cooperation can effectively identify and eliminate such activities. In addition, requiring traffic-justified direct connections for all traffic exchanged between two carriers can also minimize the situations in which there may be opportunities for regulatory arbitrage in the 8YY context, while efficiently reducing costs for both parties.³³

If the Commission does find 8YY originating access charges to be too high in some cases, rather than effecting a wholesale reversal of a compensation system perfectly suited to its one-way traffic context, the Commission should at most cap database query charges, and transport mileage where the originating carrier or its legal affiliate owns the tandem.³⁴ If the Commission takes such an approach, the caps must be set at reasonable levels that allow cost recovery and a reasonable profit, and such caps may not be set on an arbitrary basis.³⁵ A flat ban on multiple database query charges for a given call should also have exceptions where complete call information is not transmitted to the downstream provider.³⁶

the actual offenders.”). *See generally, NRIC Comments* at 6–9. *See also WTA Comments* at 4–5 (“The Commission can and should put a halt to this tactic by issuing a clear statement: (a) that the placing of robocalls to 8YY numbers is an unlawful practice under Section 201(b) and other sections of the Act; (b) that IXCs and their 8YY customers do not have to pay 8YY originating access or other charges for such unlawful calls; and (c) that entities involved in the origination of unlawful robocalls to 8YY numbers will be identified, prosecuted and fined to the maximum extent permitted by law.”). Charter recommends that the Commission address the issue of originating access, including 8YY originating access, in a holistic way, during which the Commission might find such a transition unnecessary. *Charter Comments* at 6.

³³ *See NRIC Comments* at 10 (“options [such as direct connects] exist for that IXC to respond to alleged arbitrage.”). While opposing direct connections here, as noted above, *supra* n. 13, AT&T has actually complained that it was itself denied such direct connections when it wanted them. With direct connections, for example, issues of “mileage pumping” and excessive database query charges are irrelevant.

³⁴ *See Charter Comments* at 7.

³⁵ *See CenturyLink Comments* at 12 (proposing a nationwide transport mileage cap based on a “reasonable industry average”).

³⁶ As GCI pointed out, in systems where SS7 is not deployed, transmitted call information is likely to be incomplete. *Comments of GCI Communication Corp.* at 2.

III. CONCLUSION

Adoption of the proposed rules would not be in the public interest. The Commission should therefore reject its proposed rules and instead merely declare certain practices involving 8YY access charges to be prohibited as unreasonable. It should also enlist industry cooperation to identify bad actors; and it should impose a traffic-warranted direct connection good faith negotiation obligation on all providers (covering all traffic of the providers and their affiliates). To the extent that the Commission finds it necessary to limit 8YY originating access charges, any such limitation should only be applied on a reasonable and non-arbitrary basis to database query charges and transport mileage charges (where the originating carrier and its legal affiliate owns both the end-office and the tandem).³⁷

Respectfully submitted,

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³⁷ See *Windstream Comments* at 3 (“if the Commission wants to reform database query charges, picking the lowest rate out of the hat is the definition of arbitrary and capricious and not a valid basis for reform.”); *Charter Comments* at 2 (recommending use of an average rate, not the lowest rate, for any dip charge cap).